United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

TERM, 1900.

No. 998.

22

No. SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

WILLIAM H. SERGEANT.

AND

No. 999.

No. SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

JAMES SMITH.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 2, 1900.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1900.

No. 998.

No. 4, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

WILLIAM H. SERGEANT.

AND

No. 999.

No. 5, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

JAMES SMITH.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 4, 1900.

In the Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, Plaintiff in Error,
vs.
WM. H. SARGEANT } No. 998.

and

THE DISTRICT OF COLUMBIA, Plaintiff in Error,
vs.
JAMES SMITH. } No. 999.

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a In the Police Court of the District of Columbia, May Term, 1900.

DISTRICT OF COLUMBIA
vs.
WILLIAM H. SARGEANT,
James Smith. } Nos. 195,212 and 195,308, Consolidated. Information for Violation of Police Regulations.

Be it remembered that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 No. 195,212.

(*Information.*)

In the Police Court of the District of Columbia, April Term, A. D. 1900.

THE DISTRICT OF COLUMBIA, *ss:*

Andrew B. Duvall, Esq., attorney for the District of Columbia, by James L. Pugh, Jr., Esq., special assistant attorney for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that William H. Sargeant, late of the District of Columbia aforesaid, on the tenth (10th) day of April, in the year A. D. nineteen hundred, in the District of Columbia aforesaid and in the city of Washington, on Sixth (6th) street northwest, being then and there the driver of a licensed vehicle for the conveyance of passengers for hire, did then and there occupy with his vehicle a part or portion of the north one-half of the space on the west half of Sixth street between the south wall of the Baltimore and Potomac Railroad Company's station building and the south end of the train shed, designated and set apart for and allotted to hacks and

vehicles plying for hire, such part or portion of said space so occupied as aforesaid being designated and set apart for and allotted to the sole use of the cabs, carriages, and other vehicles of the Baltimore and Potomac Railroad Company engaged in carrying passengers to and from its station, said William H. Sargeant not being then and there the driver of or in charge of any cab, carriage, or other vehicle of said railroad company, contrary to and in violation of the police regulations of the District of Columbia and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
Attorney for the District of Columbia,
(Signed) By JAMES L. PUGH, Jr.,
Special Assistant Attorney for the District of Columbia.

Endorsed: Filed April 14, 1900. (Signed) Joseph Y. Potts, clerk police court, D. C.

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No. 195,308.

(*Information.*)

In the Police Court of the District of Columbia, April Term, A. D. 1900.

The District of Columbia, *ss:*

Andrew B. Duvall, Esq., attorney for the District of Columbia, by James L. Pugh, Jr., Esq., special assistant attorney for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that James Smith, late of the District of Columbia aforesaid, on the fifteenth day of April, in the year nineteen hundred, in the District of Columbia aforesaid and in the city of Washington, on B street northwest, being then and there the driver of a certain licensed vehicle for the conveyance of passengers for hire, did then and there occupy with said vehicle a portion of the easternmost one hundred feet of a certain hack stand on the south half of B street north between the line of the west wall of the Baltimore and Potomac Railroad Company's station building and a point west thereof and one hundred and sixty feet distant therefrom, said portion of the easternmost one hundred feet so occupied, as aforesaid, having been set apart for the sole use of the cabs, carriages, and other vehicles of the Baltimore and Potomac Railroad Company engaged in carrying passengers to and from its station, said James Smith not being then and there the driver of any cab, carriage, or other vehicle of said Baltimore and Potomac Railroad Company or in charge of any thereof, contrary to and in violation of the police regulations of the District of Columbia and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
Attorney for the District of Columbia,
(Signed) By JAMES L. PUGH, Jr.,
Special Assistant Attorney for the District of Columbia.

Endorsed: Filed April 17, 1900. (Signed) Joseph Y. Potts, clerk police court, D. C.

3 In the Police Court of the District of Columbia, April Term, 1900.

Filed May 25, 1900. (Signed) Joseph Y. Potts, clerk police court, D. C.

DISTRICT OF COLUMBIA *vs.* WILLIAM H. SARGEANT.	No. 195,212.	Informations Charging Violations of the Police Regulations.
DISTRICT OF COLUMBIA *vs.* JAMES SMITH.	No. 195,308.	

Bill of Exceptions.

Be it remembered that on the 20th day of April, A. D. 1900, the above-entitled causes came on for trial in the police court of the District of Columbia, held in the city of Washington, in said District, Honorable Charles F. Scott, a judge of said court, presiding, and the following proceedings were had therein:

By agreement between the attorneys of record for the respective parties, it was ordered that the above-entitled causes be consolidated for the purposes of the trial and be heard together, all proceedings, rulings of the court, exceptions thereto, and notices of in-

4 tention to apply to the Court of Appeals of the District of Columbia for writ of error to be applied in and to each case indifferently.

Thereupon the defendants William H. Sargeant and James Smith, having been first duly arraigned each for himself, pleaded "not guilty" to the charge laid against him in the informations brought by the attorney for the District of Columbia.

And thereupon the attorney for said District, to sustain the issues in its behalf joined, called as a witness one ALBERT LAMB, who, having been first duly sworn, testified that he was the inspector of hacks for the District of Columbia, and had occupied such position since the first day of October, 1899; he knew the defendants William H. Sargeant and James Smith; that on the 10th day of April, 1900, said Sargeant was the driver of a licensed vehicle for the conveyance of passengers for hire in the District of Columbia, and that on said date he had occupied with his vehicle a part or portion of the north half of the space on the west half of Sixth street between the line of the south wall of the Baltimore & Potomac Railroad Company's station building and the south end of the train shed of said railroad company's station building, which space, so occupied by said Sargeant with his vehicle, was a part or portion of the space which under the existing police regulations of the District of Columbia had been set apart and allotted to and for the sole

use of the cabs, carriages, and other vehicles of the Baltimore & Potomac Railroad Company engaged in carrying passengers to and from its station building; and, further, that said William H. Sargeant, on the said 10th day of April, 1900, was not the driver of nor in charge of any cab, carriage, or other vehicle of said railroad company; and also that on the 15th day of April, 1900, said James Smith was also the driver of a licensed vehicle for the conveyance of passengers for hire in the District of
5 Columbia, and that he did then and there occupy with his said vehicle a portion of the easternmost 100 feet of a certain hack stand on the south half of B street north between the line of the west wall of the Baltimore & Potomac Railroad Company's station building and a point west thereof and 160 feet distant therefrom, said portion of the easternmost 100 feet so occupied by the said James Smith with his vehicle being a part or portion of the space which had been set apart and allotted to and for the sole use of the cabs, carriages, and other vehicles of the Baltimore & Potomac Railroad Company engaged in carrying passengers to and from its station; and, further, that said James Smith was not on the 13th day of April, 1900, the driver of any cab, carriage, or other vehicle of said Baltimore & Potomac Railroad Company nor in charge of any thereof.

Upon cross-examination the witness was interrogated by Mr. D. W. Baker, attorney for the defendants, as follows:

"Q. Will you tell us how many public cabs there are in the District of Columbia?"

To which question the attorney for the District of Columbia objected on the ground that the testimony thereby sought to be introduced in evidence was inadmissible, immaterial, and irrelevant for the reason that the propriety and reasonableness of the police regulations, with the violation of which the defendants respectively stand charged under the informations filed against them, was not open to question in these proceedings, said regulations having been promulgated by the Commissioners of the District of Columbia in strict accordance with the legislative powers expressly conferred upon them by the joint resolution of Congress approved June 7, 1898; which objection was overruled, and the witness permitted to answer the question as follows:

"A. I do not know exactly, but at the time there were
6 about 396, not including the licenses issued to the Metropolitan coaches."

To which action of the court in overruling said objection to the question and permitting the witness to answer as aforesaid the attorney for the District of Columbia then and there excepted, and gave notice in open court of his intention to apply to the Court of Appeals of the District of Columbia for a writ of error to review and reverse the same; and thereupon said witness, Lamb, upon further cross-examination and over the objection and exceptions duly entered by the attorney for the District of Columbia, was permitted to testify that the space set apart as a hack stand on

Sixth street adjacent to the station building of the Baltimore & Potomac Railroad Company was immediately south of the baggage entrance to said station, and was 64 feet in length; that said space would permit of nine vehicles standing thereon, and that under the regulations the north half of said space was allotted to the railroad company's cabs; that said north half of such space is nearer the exits from the railroad company's station buildings than is the half of the space allotted to the public cabs, and that a passenger coming out of the depot and walking in that direction would reach the space allotted to the railroad cabs first; that in his opinion the space nearest the exits from the station buildings was the most advantageous and desirable for the business of public hackmen, and that it was customary among the public hackmen occupying this stand for the first comer to place his vehicle upon the most northern portion of the stand, as they thereby brought themselves nearest to the exits from the station; all of which testimony the attorney for the District of Columbia moved to strike from the record on the ground that it was irrelevant, immaterial, and inadmissible for the reasons above set forth; which said motion the court overruled, and said attorney then and there excepted
7 and gave notice in open court of his intention to apply to the Court of Appeals of the District of Columbia for a writ of error to review and reverse the same.

The witness further testified, over the objection and subject to the exceptions of the attorney for the District of Columbia, that the easternmost 100 feet of the space set apart as a hack stand on B street, adjacent to the Baltimore & Potomac Railroad Company's station building, was nearest the exits from such station and was the most desirable portiod of said space for the business of public hackmen; that the person coming out of the station building and moving in the direction of said hack stand with a view of obtaining a vehicle would reach the space allotted to the cabs of the railroad company before he would reach that allotted to the public hackmen; all of which testimony the attorney for the District of Columbia also moved to strike from the record on the grounds and for the reasons above set forth, and said motion being overruled, proper exceptions and notice of intention to apply for a writ of error were given.

Thereupon said witness, upon redirect examination, testified that the Baltimore & Potomac Railroad Company owned twenty-six (26) cabs or vehicles for which that company held licenses, and that all of such cabs or vehicles were in the regular use and employ of said company in the conduct of its business of conveying passengers to and from its station; that he has noticed the public hackmen other than those employed by the railroad company who were in the habit of occupying the stands at the Sixth Street depot, and that pretty much the same men were in the habit of occupying such stands day after day; occasionally one goes on the stand who is not there regularly, but not often; that there are about fifteen or eighteen public hackmen who regularly occupy such stands, some of whom own or control two or more vehicles, and, further, that

there are thirty-three hack stands in various localities in the District of Columbia, including the two stands at the Baltimore & Potomac Railroad Company's station, and that such stands
8 would accommodate two hundred and twenty-three (223) cabs or vehicles, and that all of the public cabs or vehicles were never on the stand at any one time, as some only worked during the day while others worked at night.

Thereupon the attorney for the District of Columbia, to further support the issues in its behalf joined, called as a witness HARRY W. MARSHAL, who, having been first duly sworn, testified that since December 1, 1898, he had been employed as cab-starter by the Baltimore & Potomac Railroad Company; that prior to such date, and from February 3, 1897, he had been employed as depot agent of the Adams Express Company at the Baltimore & Potomac Railroad Company's Sixth Street station; that from said February 3, 1897, to date he had noticed the public cabs or vehicles about the station, and had noticed that pretty much the same drivers with their vehicles frequented the stands at the depot day after day; that from eight to ten different drivers were in the habit of frequenting the Sixth Street stand, and about the same number frequented the B Street stand, such drivers being other than the drivers of vehicles belonging to the railroad company; that beginning on the 20th day of April, 1900, to and including the 17th day of May, 1900, he and his relief, Charles H. Vincent, who was also in the employ of said railroad company as a cab-starter, had carefully noted the drivers of public licensed vehicles occupying such stand at each hour in the day, from six o'clock in the morning until twelve o'clock at night, and had made careful notes thereof; that the owners or drivers of such vehicles, who appeared regularly upon the stand day after day, were as follows:

Adams.
Schoeneger.
Hazel.
Smith.
Weir.
Odie.
Divine.
Ricker.
Rister.
Pollard.
Plummer.
Delaney.

9 And that the number of cabs owned or driven by such owners or drivers and occupying these stands varied during such time from thirteen to twenty, averaging eighteen or nineteen for each and every day during said period, and, further, that the showing made by this careful examination fairly represented the regular conditions with respect to the occupation of such hack stands by public hackmen which had prevailed from February, 1897.

CHARLES H. VINCENT, also called as a witness on behalf of the District of Columbia, gave evidence corroborating the testimony of said Marshal, except that his general observation of the matters and things testified to by him began in November, 1898; and thereupon the attorney for the prosecution rested.

Thereupon the defendants, to sustain the issues on their part joined, over the objection of the attorney for the District of Columbia and subject to his exceptions, introduced evidence tending to show that prior to the 20th day of October, 1898, the same being the date of the first regulation promulgated by the Commissioners of the District of Columbia allotting space for the cabs of the railroad company, about thirty or forty public hackmen had been in the habit of frequenting the stands at said depot; that since the promulgation of said regulation the number of such public hackmen frequenting said stands had dwindled to from fifteen to twenty; that the space allotted to the railroad company's cabs and vehicles on both of said stands was more advantageous than the space allotted to the public vehicles, the same being further from the exits from said station buildings, and, further, that the space so allotted to the public hackmen was practically worthless for the purposes of their business, and, further, that one of the public hackmen had stood on the space allotted to such vehicles on B street for three (3) days, and had failed to get a single fare; that he had then moved to the Sixth Street stand, with respect to which the police regulations had not been strictly enforced, and had there obtained some business, but not as much as had ordinarily fallen to him prior to the promulgation of the regulations involved in this case, and, further, when the regulations were enforced on the 6th Street side, the public cabmen got very little business; all of which testimony the attorney for the District of Columbia moved the court to strike out upon the grounds and for the reasons hereinbefore set forth; which motion was overruled, and the attorney for the District of Columbia then and there excepted and gave notice in open court of his intention to apply to the Court of Appeals of the District of Columbia for a writ of error to review and reverse the same, and thereupon both sides rested.

Thereupon the attorney for the defendants moved the court, upon the foregoing evidence—the same being the substance of all the evidence submitted in the causes—to instruct itself as matter of law that the defendants were not guilty on the ground that the evidence showed that the regulations which the defendants were charged with violating were unreasonable, unjust, unfair, null, and void; to which motion the attorney for the District of Columbia interposed an objection, and the said court, having overruled the objection, granted the instruction as prayed; to which action of the court the attorney for the District of Columbia then and there excepted and gave notice in open court of his intention to apply to the Court of Appeals of the District of Columbia for a writ of error

to review and reverse the same, and thereupon the court, having fully considered the evidence, declared the regulations, with the violation of which the defendants were respectively charged, to be unreasonable, unjust, null, and void, and found the defendants not guilty; to which declaration and finding the attorney for the District of Columbia then and there excepted and gave notice in open court of his intention to apply to the Court of Appeals of the District of Columbia for a writ of error to review and reverse the same.

11 In testimony whereof, and to the end that all of the foregoing may duly appear of record, at the request of the attorney for the District of Columbia, the presiding judge signs this bill of exceptions this twenty-fifth day of May, A. D. 1900, and directs the same to be filed and made of record.

(Signed) CHARLES F. SCOTT, *Judge.*

We agree to the foregoing bill of exceptions.

(Signed) D. W. BAKER,
Attorney for Defendants.

(Signed) JAMES L. PUGH,

(Signed) F. D. McKENNEY,
For the District of Columbia.

12 (*Transcript of Docket Entries.*)

In the Police Court of the District of Columbia, April Term, 1900.

DISTRICT OF COLUMBIA *vs.* WILLIAM H. SARGEANT. } No. 195,212. Information for Violation of Police Regulations.

Tuesday, April 17, 1900, continued to April 20, 1900. April 20, 1900, motion made to quash information. Motion overruled, exception noted by defendant, and notice given in open court of his intention to apply to a justice of the Court of Appeals for a writ of error.

Jury trial demanded and denied. Exception noted by the defendant, and notice given in open court of his intention to apply to a justice of the Court of Appeals for a writ of error. Defendant arraigned. Plea, not guilty. Continued to April 27, May 18, 23, 1900.

May 23, 1900, judgment, not guilty.

Exceptions noted by the District of Columbia, through its special assistant attorney, to rulings of the court on matters of law and to the judgment of the court, and notice given in open court of its intention to apply to a justice of the Court of Appeals for a writ of error.

Witnesses for the District of Columbia: Albert W. Lamb, Harry W. Marshall, and Charles B. Vincent.

Witnesses for the defence: Samuel A. Groff, John R. Pollard, P. J. Devine, and George Hazel.

13 (*Transcript of Docket Entries.*)

In the Police Court of the District of Columbia, April Term, 1900

DISTRICT OF COLUMBIA *vs.* JAMES SMITH. } No. 195,308. Information for Violation of Police Regulations.

Tuesday, April 17, 1900, continued to April 20, 1900. April 20, 1900, motion made to quash information. Motion overruled, exception noted by defendant, and notice given in open court of his intention to apply to a justice of the Court of Appeals for a writ of error.

Jury trial demanded and denied. Exception noted by the defendant, and notice given in open court of his intention to apply to a justice of the Court of Appeals for a writ of error. Defendant arraigned. Plea, not guilty. Continued to April 27, May 18, 23, 1900.

May 23, 1900, judgment, not guilty.

Exceptions noted by the District of Columbia, through its special assistant attorney, to rulings of the court on matters of law and to the judgment of the court, and notice given in open court of its intention to apply to a justice of the Court of Appeals for a writ of error.

Witnesses for the District of Columbia: Albert W. Lamb, Harry W. Marshall, and Charles B. Vincent.

Witnesses for the defence: Samuel A. Groff, John R. Pollard, P. J. Devine, and George Hazel.

14 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 13, inclusive, to be true copies of originals and docket entries in causes No. 195,212 and No. 195,308, wherein The District of Columbia is plaintiff and William H. Sargeant and James Smith defendants, respectively, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 2d day of June, A. D. 1900.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Charles F. Scott, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and William H. Sergeant, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the first day of June, in the year of our Lord one thousand nine hundred.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—
M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

16 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Charles F. Scott, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and James Smith, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of

Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the first day of June, in the year of our Lord one thousand nine hundred.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Endorsed on cover: District of Columbia police court. No. 998. The District of Columbia, plaintiff in error, *vs.* Wm. H. Sargeant. And No. 999. The District of Columbia, plaintiff in error, *vs.* James Smith. Court of Appeals, District of Columbia. Filed Jun-2, 1900. Robert Willett, clerk.

IN THE

Court of Appeals, District of Columbia.

APRIL TERM, 1900.

DISTRICT OF COLUMBIA, *Plaintiff in Error*,
vs.
WILLIAM H. SARGEANT, } No. 998.

and

DISTRICT OF COLUMBIA, *Plaintiff in Error*,
vs.
JAMES SMITH. } No. 999.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

ANDREW B. DUVALL,
Attorney for the District of Columbia.
F. D. MCKENNEY.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 6-5-1900

IN THE

Court of Appeals, District of Columbia.

APRIL TERM, 1900.

DISTRICT OF COLUMBIA, *Plaintiff in Error*,
vs.
WILLIAM H. SARGEANT, } No. 998.

and

DISTRICT OF COLUMBIA, *Plaintiff in Error*,
vs.
JAMES SMITH. } No. 999.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Now comes The District of Columbia, plaintiff in error in both of the above-entitled causes, and respectfully moves this honorable court to expedite the above causes under the provisions of section IX of rule 25 of the rules of practice of this court, and as grounds for such motion respectfully

represents that the main litigation, of which the above is but a continuation, has heretofore been before this court for its determination in the cases of The District of Columbia *vs.* Curry, 14 App. D. C., p. 423, and The District of Columbia *vs.* Hazel, XXVIII Washington Law Reporter, p. 372; and, further, that the matter therein involved is of public importance and should be finally disposed of at the earliest possible moment, as the maintenance of good order and the police regulations about the depots in this city in a great measure depend thereon, as proper order and discipline cannot be maintained and is not being maintained at the Baltimore and Potomac Railroad Company's depot by reason of the unsettled and uncertain status of the police regulations governing public hackmen at such station.

Plaintiff in error further represents that the constitutionality of the joint resolution and police regulations in issue in the above causes was settled in favor of such resolution and regulations in the case of The District of Columbia *vs.* Hazel, above referred to, and the sole additional question involved in these causes is whether it is competent for the judiciary, upon evidence given, to inquire into the reasonableness or propriety of a municipal regulation which has been promulgated pursuant to and in strict accord with the express authority conferred upon the municipal officers in such regard.

ANDREW B. DUVALL,
Attorney for the District of Columbia.

F. D. MCKENNEY.

Court of Appeals, District of Columbia.

APRIL TERM, 1900.

No. 998.

No. 11, Special Calendar.

THE DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

WILLIAM H. SERGEANT,

AND

No. 999.

No. 12, Special Calendar.

THE DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

JAMES SMITH.

BRIEF FOR DEFENDANTS IN ERROR.

D. W. Baker,
John C. Gittings,
Attorneys for Defendants in error.

Saxton Printing Co., Washington.

Court of Appeals, District of Columbia.

APRIL TERM, 1900.

THE DISTRICT OF COLUMBIA,
Plaintiff in Error,
v.
WILLIAM H. SERGEANT.
No. 998.

AND

THE DISTRICT OF COLUMBIA,
Plaintiff in Error,
v.
JAMES SMITH.
No. 999.

STATEMENT.

These cases involve the construction of the amended Police Regulations, relating to the orderly disposition of hacks assembled on streets, avenues and public places in the District of Columbia. Section 12 reads as follows:

"That so much as may be necessary of the west half of Sixth Street from the south building line of B

Street, Northwest, to the line of the south wall of the Baltimore and Potomac Railroad Company's station building, be and the same is hereby designated and set apart as a stand for omnibuses of licensed hotels; and so much of the west half of said street, from the line of said south wall to the line of the south end of the train shed as may not be required for the convenient transaction of public business pertaining to or connected with said railroad station and including the receiving, handling and delivery of the mails, baggage, express, and freight, is hereby designated as a stand for hacks and vehicles plying for hire; the north one-half of the space so allotted to hacks and vehicles plying for hire shall be for the sole use of the cabs, carriages, and other vehicles of the Baltimore and Potomac Railroad Company, engaged in carrying passengers to and from its station."

Section 13 reads as follows:

"That so much of the south half of B Street north from the line of the west wall of the Baltimore and Potomac Railroad Company's station building, westerly to a point distant one hundred and sixty feet therefrom, as may be necessary to accommodate a double line of vehicles placed parallel with the curb, be and the same is hereby designated and located as a stand for hacks and vehicles plying for hire: provided, however, that the easternmost one hundred feet in length of said space by its entire width is hereby set apart for the sole use of the cabs, carriages and other vehicles of the said railroad company engaged in carrying passengers to and from its station."

The informations charge a misdemeanor within the above sections, and after a plea of not guilty testimony was taken to show that the regulation discriminated against the defend-

ants in error, this court having held in the case of the *District of Columbia* v. *Hazell*, No. 22, Washington Law Reporter, 372, that it was necessary to take testimony on this point. In this case Mr. Justice Sheperd, dissenting, held the regulations null and void as showing on their face an unlawful discrimination, and he further doubted the authority of Congress itself to confer such special privilege.

The testimony shows the manner of the division of the space which is in accordance with the regulations; and further shows that the part allotted for the sole use of cabs, carriages and other vehicles of the Baltimore and Potomac Railroad Company, is the part nearest to the entrances to the depot of said railroad company, and that the defendants in error were arrested on said part. It was shown that there are 396 cabs in the District of Columbia, and that the part of the stand allotted to these cabmen was the most undesirable portion, and that persons coming out of the station and moving in the direction of the hack stand with the view of obtaining a vehicle, would reach the space allotted to the cabs of the railroad before they would reach that allotted to the public hackmen. Certain testimony was given on the part of the plaintiff in error to show the number of cabmen that had frequented the depot within a certain number of days.

On the part of the defendants in error, testimony was given to show that the space allotted to the railroad company's cabs and vehicles on both of the stands, that is on the B Street stand and the 6th Street stand, was more advantageous than the space allotted to the public vehicles, AND THAT THE SPACE SO ALLOTTED TO THE PUBLIC VEHICLES WAS PRACTICALLY WORTHLESS FOR THE PURPOSES OF THEIR BUSINESS, AND THAT ONE PUBLIC HACKMAN HAD STOOD ON THE SPACE ALLOTTED TO SAID VEHICLES ON B STREET FOR THREE DAYS AND HAD FAILED TO GET A SINGLE FARE; that he then had to move to the 6th Street stand

with respect to which the Police Regulations had not been strictly enforced, *and then did little or no business.* The testimony showed that before the regulation went into effect, SOME THIRTY OR FORTY HACKMEN had been in the habit of frequenting the stand of said depot; that since the promulgation of said regulation, the number of said hackmen had dwindled down to from fifteen to twenty, and that when the regulations were enforced on the 6th Street side, the public cabmen got very little business. On this testimony the attorney for the defendants moved the court to instruct itself as matter of law, that the defendants were not guilty on the ground that the evidence showed that the regulations which the defendants were charged with violating, were unreasonable, unjust, unfair, null and void, and the court granted said motion; and thereupon found the defendants not guilty. An exception was noted to this ruling on the plaintiffs in error and the case brought here for review. On examination of the record, it will be seen that certain exceptions were taken to the admission of evidence affecting the discrimination against the defendants in error. These exceptions and the exception to the prayer offered by the defendants in error are the only questions raised in the record and they involve the same point.

ARGUMENT.

The question involved in this cause is simply this: Whether or not the regulations contained in Sections 12 and 13 of the amended Police Regulations are a discrimination in fact, against the public cabmen of the District of Columbia. Mr. Justice Sheperd, in his dissenting opinion in the Hazell case, held that the regulations were a discrimination as matter of law, but the majority of the court held that there should be some evidence taken in order to show that there was an unlawful discrimination or inequality as mat-

ter of fact. It is insisted that, on an examination of this record, the defendants in error have complied with the terms of the majority opinion in the Hazell case, and it is shown, beyond doubt, that the discrimination is unlawful, in that it destroys the business of the public hackmen of the District of Columbia, and gives all of the business, in and about the depot, to the preferred cabmen—those of the railroad. We might end here and say nothing further in this brief, but for the fact that the plaintiff in error now attempts to raise what he calls a new question, but upon an examination of the Curry case and of the Hazell Case, it will be found that this question has been decided by this Court. and been decided in favor of defendants in error.

The question he desires to raise is this: That the Joint Resolution of Congress, conferring the right upon the Commissioners of the District of Columbia to make these amended regulations, gave them specific authority, and parole evidence is not admissible to show that the regulation is unreasonable.

In answer to this, it is only necessary to read what this Court said in the Curry case, *14 App. D. C., 423*. In the Curry case the Court held the regulations unreasonable and null and void, because they unlawfully discriminate against a certain class of individuals carrying on a general occupation, and that the streets of the City of Washington, being for the use of all the public, it was a violation of the fundamental principles of equality to attempt to give an exclusive privilege in them, or any part of them, to any one person, company, or organization whatsoever, to the exclusion of others equally entitled; and speaking of the joint resolution of Congress, the Court said: "And so far as the joint resolution of Congress can be construed as authorizing the concession of such exclusive privileges, the joint resolution likewise must be taken as equally obnoxious to the principles of equality, and equally invalid;" so that the

Court of Appeals has said that this Act of Congress, if it could be construed to mean to authorize a concession of an exclusive privilege to the exclusion of others equally entitled, it would be against the principles of equality, and be invalid and unconstitutional. Therefore it was necessary for the Commissioners of the District of Columbia, in framing regulations under this Act of Congress, to frame them in such manner so as to prevent any unlawful discrimination against the citizens of this District. The right to amend the first resolution by the present regulations, was based on that part of the decision of the Court of Appeals in the Curry case which says: "If, however, the joint resolution is to be construed simply as giving the railroad company power to conduct a cab business in the District of Columbia, upon equal terms with other persons, and the principle of equality *can* be subserved by the assignment of a portion of the stand in question to the railroad company and a portion to other persons, in regard to which it is unnecessary to express an opinion, inasmuch as there is no such case before us, it is possible that the joint resolution might be taken as unobjectionable." Now, in the Hazell case, the majority of the Court merely say that until it is demonstrated that this division works an unlawful discrimination, the regulation will be held valid, and it is contended on the part of the defendants in error that the testimony taken in the cause shows that the discrimination is unlawful because it prevents other cabmen in the District of Columbia from making a living.

All of the testimoney shows that the most desirable and advantageous positions under these regulations are given to the railroad. It shows in one place that while the space has been divided in half, the half allotted to the railroad company is nearest the depot and that the cabmen standing on the other half of the space, being the 6th street side, obtain little, if any business, and on the B Street side the space is not even

divided evenly, but the first 100 feet nearest the depot is allotted to the cabs of the railroad company and the last sixty feet to all of the cabs of the District of Columbia, and the testimony shows and is uncontradicted, that when the regulations were in force the space so allotted to the PUBLIC HACKMEN WAS PRACTICALLY WORTHLESS FOR THEIR BUSINESS, AND THAT ONE OF THEM HAD STOOD ON THE SPACE ALLOTTED TO PUBLIC VEHICLES ON THE B STREET SIDE FOR THREE DAYS AND HAD FAILED TO GET A SINGLE FARE. The testimony further shows that before the regulations there were thirty or forty public hackmen who had been in the habit of frequenting the stands of the depot, and, that since the regulations the business ot half of them had been entirely destroyed and that at present, only fifteen to twenty cabmen were to be found at the depot. The cabs of the railroad company are public cabs within the meaning of the law, and stand as far as the question of licenses, etc., are concerned, upon the same footing with all other cabs in the District of Columbia; that they have a right to use all of the cab stands of the District of Columbia, they being public cabs within the meaning of the law.

Now, there were in the District of Columbia at the time this cause was brought, about three hundred and ninety-six public cabs, all of which had the same rights, except the exclusive rights given by the amended regulations, to the cabs of the railroad company, but the testimony shows that these cabs were confined, as far as the depot stands were concerned, to a small space, which space was absolutely unproductive. The testimony in regard to the unproductiveness of these stands, was given by a great number of witnesses—cabmen—and in the bill of exceptions it is stated merely as the testimony produced on the part of the defendants, without setting out how many witnesses were called.

Therefore, in answer to the contention that the regulation

was made under a special Act of Congress, it is only necessary to say that these regulations must be reasonable, because this court has said, in construing the joint resolution of Congress in the Curry case, that that joint resolution could only be construed as giving the Commissioners a right to make a reasonable regulation.

It is therefore insisted that the regulations as amended are unreasonable, are an unlawful discrimination, depriving cabmen of the District of Columbia from making a living, and allowing the Railroad Company a monopoly of the right to use the public streets of Washington to the exclusion of other persons carrying on the same occupation; and that said appropriation as made by the amended regulations, is unfair, unjust and against the joint resolution, and that the court below committed no error when it held that on the testimony in this cause, the defendant could not be held to have violated these regulations, because the regulations work such an unlawful discrimination in fact against the defendants in error, that they were absolutely null and void and of no effect. It is therefore respectfully submitted that the judgment of the court below be affirmed.

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